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JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 618

SPOKANE BUILDING AND CONSTRUCTION TRADES COUNCIL; LOCAL UNION 98 OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; T. J. RICHARDSON AND C. E. FARPINGTON,
Petitioners,

vs.

AUDUBON HOMES, INC., *Respondent*

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Washington

SAMUEL B. BASSETT
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Seattle 4, Washington

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Spokane, Washington
Counsel for Petitioners.

THE ARGUS PRESS, SEATTLE

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Constitutional Provisions Involved	2
Statement of the Case	2
Reasons for Granting the Writ	8
Conclusion	10
Appendix A, Constitutional Provisions	13
Appendix B	15
1. Opinion of the Washington Supreme Court	15
2. Order of the Washington Supreme Court Denying the Petition for Rehearing	25
3. Judgment of the Washington Supreme Court	26

CITATIONS

Cases

International Brotherhood of Teamsters, Local 695, A.F.L., v. Vogt, Inc., 270 Wis. 315, 74 N.W.(2d) 749 (1956), cert. granted, 1 L.Ed.(2d) 44 (Oct. 8, 1956) (No. 79) 8, 9, 10

Ostroff v. Laundry & Dye Works Drivers, Local 566, et al., 37 Wn.(2d) 595, 225 P.(2d) 419 (1950) 6

Spokane Building and Construction Trades Council, Local 98 of United Brotherhood of Carpenters and Joiners of America; T. J. Richardson and C. E. Farrington v. Audubon Homes, Inc., 149 Wash. Dec. 144, 208 P.(2d) 1112 ..... 1, 15

Statutes:

Revised Code of Washington, Sec. 49.32.010 5
Sec. 49.32.020 5
Sec. 49.32.040 6
Sec. 49.32.050 6

Constitution

United States Constitution
First and Fourteenth Amendments 2, 7, 13

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No.....

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Washington

Petitioners pray that a writ of certiorari issue to review the judgment of the Washington supreme court entered in the above-entitled case on September 12, 1956.

CITATIONS TO OPINIONS BELOW

The opinion of the superior court for Spokane county, Washington, is unreported and is printed in the Certified Record (R. 16-17). The opinion of the Washington supreme court is reported in 149 Wash. Dec. 144, 298 P.(2d) 1112, and is printed in the Certified Record (R. 29-38), and in Appendix B, *infra,* pp. 15-24.

JURISDICTION

The judgment of the supreme court of Washington

was entered on September 12, 1956 (R. 44, App. B p. 26). The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1257 (3), since rights, privileges and immunities specially set up and claimed under the United States Constitution have been denied.

QUESTION PRESENTED

Whether peaceful picketing, having as its purpose the publication of the facts of a labor dispute and the organization of non-union employees, preceded by solicitation of non-union employees, and which is unaccompanied by demands of any kind upon the employer, is constitutionally protected under the First and Fourteenth Amendments to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the First and Fourteenth Amendments to the United States Constitution. They are printed in Appendix A, *infra,* p. 13.

STATEMENT OF THE CASE

Petitioner Spokane Building and Construction Trades Council is an association of labor unions having members in the building and construction industry; petitioner Local Union 98 of the United Brotherhood of Carpenters and Joiners of America is an unincorporated labor organization and a member union of said Council; petitioner T. J. Richardson is the business agent and secretary-treasurer of said Council; and petitioner C. E. Farrington is secretary of said Local 98 (R. 1-2, 5). The petitioners are hereinafter referred to as the Unions.

Respondent Audubon Homes, Inc. (hereinafter referred to as Audubon), is a Washington corporation engaged in the building of dwelling houses (R. 9). In the spring of 1955, Audubon had eleven houses under construction in the city of Spokane, Washington, and had in its employ, for this purpose, ten carpenters and helpers and one laborer, none of whom were members of the Unions (R. 9, 10-11).

The Unions, at the time this action arose, had collective bargaining agreements with numerous contractors in Spokane and vicinity which, among other things, provided for health and welfare plans, show-up time, stand-by time and travel time; benefits which the non-union employees of Audubon did not enjoy (R. 12). Audubon provided year-round employment for its employees (R. 13), but it paid its carpenters only $2.60 per hour (R. 13), while the union scale for carpenters was $2.75 per hour (R. 12).

Pursuant to a campaign to organize non-union employees (R. 11), representatives of the Unions, at various times on and after January 31, 1955, approached Audubon's non-union employees and solicited their membership (R. 13). However, none of the employees joined any of the Unions (R. 14). They expressed themselves as being satisfied with the conditions of employment provided by Audubon (R. 14).

A few days prior to April 5, 1955, the Unions started picketing at the various locations where Audubon was constructing houses (R. 14). The pickets carried signs which read:

"NON-UNION EMPLOYEES WORKING ON THIS JOB. AMERICAN FEDERATION

OF LABOR AND BUILDING TRADES COUNCIL." (R. 15)

The picketing was peaceful at all times and in all respects (R. 15). Audubon employees disregarded the picketing and continued to work (R. 15).

As a result of the picketing, certain suppliers refused to deliver materials to Audubon at the construction sites, and the parties agreed that, if the picketing continued, other suppliers would also refuse to deliver goods and Audubon would suffer injury to its business and a loss of profits (R. 15).

At no time did the Unions demand that Audubon compel or coerce any of its non-union employees to become members of or join any of the Unions. No contract was presented to Audubon and no demand was made that Audubon sign any contract compelling its non-union employees to become members of any of the Unions (R. 14).

On April 5, 1955, Audubon filed a complaint in the Superior Court for Spokane County, asking that the picketing be enjoined (R. 1-4). A temporary restraining order was issued (R. 14). Subsequently, a hearing on a request for a permanent injunction was had upon stipulated facts (R. 8, 9-15).

The trial court specifically found that the picketing was not directed against Audubon, but was maintained and directed against Audubon's non-union employees (R. 25). Based upon this finding and upon the stipulated facts, the trial court concluded that a labor dispute existed within the meaning of certain Washing-

ton statutes,[1] and, further, that the picketing was not coercive (R. 16-17, 25). The request for a permanent injunction was denied (R. 27-28).

---

[1]The relevant sections of Washington's "Labor Dispute Act" are as follows:

"49.32.010 Definitions. For the purpose of this chapter:

"(1) A case shall be held to involve or to grow out of a labor dispuite when the case involves persons who are engaged in the same industry, trade or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is:

" * * *

"Between one or more employees or associations of employees and one or more employees or associations of employees; or

"When the case involves any conflicting or competing interests in a labor dispute of persons participating or interested therein.

"(2) A person or association shall be held to be a 'person participating or interested' in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which dispute occurs, or has a direct or indirect interest therein or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(3) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. (1933 ex.s. c 7 § 13; RRS § 7612-13)."

"49.32.020. Policy enunciated. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the state, as such jurisdiction and authority are herein defined and limited, the public policy of the state is declared as follows:

"Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Although he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or

On appeal, the court below reversed, in an *en banc* decision, one judge dissenting, and ordered that a permanent injunction be issued (R. 44, App. B p. 26). Contrary to the trial court, the court below held that no labor dispute existed within the meaning of the Washington statutes,[2] and that the picketing was coercive. Although the trial court had found that the picketing was maintained and directed at the employees, the court below *inferred* that the picketing was conducted either to force the employer out of business or to force it to force its employees into the Unions. Either of these two objectives is unlawful according to the laws and public policy of Washington. Therefore, the court concluded that the picketing was conducted for an unlaw-

[2] Even if the court had held that a "labor dispute" existed, such a finding would not have saved the picketing. Injunctions will issue in "labor disputes" where the picketing is found to be "coercive." *Ostroff v. Laundry & Dye Works Drivers, Local 566, et al.*, 37 Wn.(2d) 595, 599-600, 225 P.(2d) 419 (1950).

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protections. Therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the state are enacted. (1933 ex.s. c 7 § 2; RRS § 7612-2)."

"49.32.040 Injunctions in labor disputes. No court or judge shall have jurisdiction to issue any restraining order, or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter; nor shall any such restraining order, or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. (1933 ex.s. c 7 § 1; RRS § 7612-1)."

"49.32.050 Jurisdiction of courts. No court shall issue any restraining order, or temporary or permanent injunction, in any case involving or growing out of any labor dispute, or prohibit any person or persons participating or interested in such dispute from doing, whether singly or in concert, any of the following acts:

" • • •

"(5) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

" • • •

"(1933 ex.s. c 7 § 4; RRS § 7612-4.)"

ful purpose and should be enjoined (R. 34, App. B p. 21).

As to the Unions' claim that such an injunction would violate the Unions' right of free speech as protected by the First and Fourteenth Amendments to the United States Constitution, the court below said:

> "Finally, we are convinced that issuance of the injunction would not violate defendants' constitutional right of free speech. The rule announced in *Swenson v. Seattle Central Labor Council*, 27 Wn. (2d) 193, 206, 177 P.(2d) 873 (1947), is applicable:
>
> "'The United States supreme court has, by these cases, established this rule: Peaceful picketing is an exercise of the right of free speech. Organized labor has the right to communicate its views either by word of mouth or by the use of placards. This is nothing more nor less than a method of persuasion. But, when picketing ceases to be used for the purpose of persuasion—just the minute it steps over the line from persuasion to coercion—it loses the protection of the constitutional guaranty of free speech, and a person or persons injured by its acts may apply to a court of equity for relief.'
>
> "Although peaceful picketing is recognized as an exercise of the right of free speech and therefore lawful, it cannot be made the cover for concerted action against an employer in order to achieve an unlawful or prohibited objective, or an objective which is contrary to the declared public policy of the state. *Vogt, Inc., v. International Brotherhood of Teamsters, Local 695, A.F.L.*, ... Wis. ....., 74 N.W.(2d) 749 (1956)." (R. 34-35, App. B pp. 21, 22)

On July 21, 1956, the Unions' petition for rehearing

was filed (R. 39), and on September 12, 1956, the petition was denied (R. 43, App. B p. 25), and final judgment was entered, with instructions to issue an injunction (R. 44, App. B p. 26).

REASONS FOR GRANTING THE WRIT

1. This Case Involves the Same Question as that Involved in *International Brotherhood of Teamsters, Local 695 v. Vogt, Inc.*, a Case Now Awaiting Decision by this Court.

The question involved in this case is, with one variation, the same question now before this Court in *International Brotherhood of Teamsters, Local 695, v. Vogt, Inc.*, 270 Wis. 315, 74 N.W.(2d) 749 (1956), cert. granted, 1 L.ed.(2d) 44 (Oct. 8, 1956) (No. 79). As stated in the petition for certiorari filed in *Vogt*, the question involved in that case is:

> "Whether peaceful picketing, having as its purpose the publication of the facts of a labor dispute and the organization of non-union employees, preceded by solicitation of non-union employees, and conducted on a town road bordering the situs of the dispute, and which is unaccompanied by demands of any kind upon the employer, is constitutionally protected under the First and Fourteenth Amendments to the Constitution of the United States."

This differs from the question involved in the instant case only in reference to the picketing being conducted "on a town road." In the instant case the picketing was conducted in front of various locations, in an urbanized area, where the respondent was constructing houses (R. 14), and the location of the picketing was not a factor in the decision of the court below, as it was in *Vogt*.

In all other respects the cases are substantially the same.

In the instant case, as in *Vogt*, the picketing was preceded by direct attempts to solicit membership among the non-union employees (R. 13-14); the picketing was at all times peaceful and orderly (R. 15); and no demands of any kind were made upon the employer (R. 14). As in *Vogt*, the unions' asserted purpose in picketing was to organize the non-union employees, and, as in *Vogt*, the trial court recognized that to be the union's purpose, for it found that the picketing was maintained and directed at the employees, and not at the employer (R. 25).

Nevertheless, the Washington supreme court held, as did the Wisconsin supreme court in *Vogt*, that the picketing could not have been conducted for the enlightenment of the employees, as they had previously been solicited by the unions, and had declined to join. The only inference possible, in the view of both courts, is that the real purpose of the picketing was either to force the employer out of business or to force him to force his employees into a union. Therefore, as in *Vogt*, the court below held that the picketing was being carried on for an unlawful purpose and could be enjoined without infringing the constitutional right of free speech (R. 34-35, App. B pp. 21-22).

Because of the identity of the cases, we should like to assert, by reference, all of the reasons for granting *certiorari* which were ably advanced by counsel for the petitioners in *Vogt*.

2. The Court Below Relied Upon the *Vogt* Decision in Concluding that Organizational Picketing Is Not Constitutionally Protected.

The closeness with which the instant case is tied to *International Brotherhood of Teamsters, Local 695 v. Vogt* is illustrated by the fact that the court below relied upon the *Vogt* decision in concluding that the type of picketing involved in this case was not constitutionally protected. Said the court below:

> "Although peaceful picketing is recognized as an exercise of the right of free speech and therefore lawful, it cannot be made the cover for concerted action against an employer in order to achieve an unlawful or prohibited objective, or an objective which is contrary to the declared public policy of the state. *Vogt, Inc., v. International Brotherhood of Teamsters, Local 695, A.F.L.*, ... Wis. ....., 74 N.W.(2d) 749 (1956)." (R. 35, App. B p. 22)

CONCLUSION

This case raises the same constitutional question now before this Court in *International Brotherhood of Teamsters, Local 695, v. Vogt*. We pray that the reasons which prompted this Court to grant *certiorari* in *Vogt* will also prompt this Court to grant *certiorari* here. This is a further example of how some state courts are striking down peaceful organizational picketing by inferring that such picketing has an "unlawful purpose," within the meaning of this Court's prior decisions in this field, even though such an inference has no factual support in the record.

Wherefore, petitioners pray that this petition for a writ of *certiorari* be granted.

Respectfully submitted,

SAMUEL B. BASSETT
R. MAX ETTER
Counsel for Petitioners.

APPENDIX A.

United States Constitution

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourteenth Amendment

Section I.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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APPENDIX B.

1. OPINION OF THE WASHINGTON SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

AUDUBON HOMES, INC., a Corporation,
Appellant,

vs.

SPOKANE BUILDING AND CONSTRUCTION TRADES COUNCIL; LOCAL UNION 98 OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; T. J. RICHARDSON and C. E. FARRINGTON,
Respondents.

No. 33480
En Banc

Filed June 21, 1956

Plaintiff appeals from a decree which denies its application for a permanent injunction enjoining defendants from picketing its place of business and dismisses its action.

No testimony was taken at the trial. The court received a written stipulation setting forth facts agreed upon by the parties.

April 4, 1955, plaintiff, a Washington corporation, was engaged in the construction of eleven dwelling houses in Spokane. On that date, it had in its employ ten carpenters and helpers and one laborer, none of whom were members of defendants' labor organizations or associations. The plaintiff provided year-round employment for its employees. However, it paid less than the existing union scale of wages; had no agreement with its employees regarding health and welfare plans, show-up time, stand-by time, or travel time; and had no agreement with its employees for sickness, death or

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burial benefits. Plaintiff's non-union employees expressed satisfaction with the conditions of their employment. There is no dispute between them and plaintiff as to wages, hours, or conditions of employment.

The defendant, Spokane Building and Construction Trades Council, is an association of various trade unions, including Local 98 of the United Brotherhood of Carpenters and Joiners of America. The business agent of the council and the secretary of the carpenters' union are also parties defendant.

The parties agree that

" . . . defendants . . . were advised . . . that they could not require or demand that any employer, of any of their members, compel or coerce any non-union employee of said employer to become a member of any of said defendant labor organizations against the will of said non-union employee; and said defendants agreed that no request or demand could be made of any employer of non-union employees to compel said employer to coerce or compel any non-union employee to become a member of any of defendants' labor oranizations; . . . "

The *modus operandi* of defendants' campaign, to organize non-union employees and bring them to membership in the respective unions, is described in the agreed statement of facts:

"1. Contact employer and inform him that your organization is going to attempt to organize his employees into the organization you represent and if successful will be back to discuss an agreement to cover them.

"2. Contact non-union employees and make an attempt to organize them into the proper union having jurisdiction over the work being done.

"3. If workers do not join union, picket the employees with this type of banner, 'Non-union employees working on this Job.' A.F. of L. Building Trades Council.

"4. Keep notes of all contacts."

It appears that defendants did not demand that plaintiff compel or coerce any of its non-union employees to join any of defendants' labor organizations; nor was any contract presented to plaintiff which would compel any non-union employees to become members of any of defendants' unions. On the other hand, it does not appear in the record that paragraph No. 1 of the organizational plan was carried out. There is nothing to show that defendants' representatives discussed the matter with representatives of plaintiff.

On numerous occasions, commencing January 31, 1955, plaintiff's non-union employees were approached by authorized representatives of defendants. They explained the advantages of union membership and the disadvantages of their present status. They solicited their union membership. None of plaintiff's non-union employees joined any of defendants' labor organizations.

A few days prior to April 5, 1955, defendants' representatives commenced to march in front of the location where plaintiff was constructing its houses. They carried signs reading:

> "NON-UNION EMPLOYEES WORKING ON THIS JOB. AMERICAN FEDERATION OF LABOR AND BUILDING TRADES COUNCIL."

The picketing was peaceful at all times and in all respects.

As a result of the picketing, certain suppliers of materials refused to make deliveries to plaintiff at its construction sites. Plaintiff's non-union employees disregarded the picketing and continued to work at their employment.

The parties further agree that there are other suppliers who will refuse to deliver materials in the event

picketing is continued; and that plaintiff will suffer injury and damage to its business and loss of profits.

Based upon these facts, the trial court entered an additional finding that the picketing by defendants was not maintained or directed against plaintiff, but was maintained and directed against the *employees* of plaintiff.

The trial court concluded, as a matter of law, that a labor dispute existed between plaintiff's non-union employees and the defendants; and that picketing

"... was not coercive in accord with the statutes and law applicable, and the same was lawful."

Plaintiff's action for an injunction against the picketing was dismissed.

RCW 49.32.010 provides:

"... A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is:

"...

"Between one or more employees or associations of employees and one or more employees or associations of employees; ..."

Based upon this statute, the trial court concluded that a labor dispute existed under the facts, and hence, no injunction should issue.

Defendants argue: that there are two types of peaceful picketing—the first, against the *employer,* the second, against the *employees;* that they are engaged only in picketing the *employees;* that a labor dispute exists because defendants have not been able to persuade the employees to join the union; that our statutes prohibit an injunction under the circumstances; and, that pick-

eting the employees only is a constitutional exercise of the right of free speech. They term their actions "organizational picketing."

From *Safeway Stores, Inc., v. Retail Clerks' Union, Local No. 148,* 184 Wash. 322, 51 P.(2d) 372 (1935), to *Union Electric & Plumbing Supply, Inc., v. United Ass'n of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada, Local Union 32,* 45 Wn.(2d) 17, 272 P.(2d) 144 (1954), this Court has held that a labor dispute does not exist when no member of the picketing union is employed by the person whose *premises are picketed.* In the latter case, we said:

"The controlling fact established by the findings is that, when plaintiff's business or operations were picketed, it had no employees who were members of the picketing union. Consequently, there was no labor dispute within the purview of the 1933 labor disputes act, RCW 49.32.010, RCW 49.32.040 [*Cf.,* Rem. Rev. Stat. (Sup.) §§7612-13, 7612-1. *Gazzam v. Building Service Employees International Union, Local 262,* 29 Wn.(2d) 488, 497, 188 P.(2d) 97 (1947), affirmed by the United States supreme court in *Building Service Employees International Union, Local 262, v. Gazzam,* 339 U.S. 532, 94 L.Ed. 1045, 70 S.Ct. 784. Also, *Morris v. Local Union No. 494 of Amalgamated Meat Cutters & Butcher Workmen of Spokane,* 39 Wn.(2d) 33, 36, 234 P.(2d) 543 (1951), citing cases subsequent to the *Gazzam* cases."

Of the particular section of the statute (quoted *supra*) relied upon by the trial court, we said, in *Swenson v. Seattle Central Labor Council,* 27 Wn.(2d) 193, 201, 177 P.(2d) 873 (1947):

"There could not have been a dispute 'between one or more employees or associations of employees and one or more employees or associations of employees,' as provided in the act, because here, no member of the picketing unions were employees of the Sweden manufacturing company. A jurisdictional dispute between rival

unions can become a 'labor dispute' provided the union members involved are employees of the same company, and provided further that no exclusive bargaining agency has been set up or provided for. Here, there was no labor dispute."

We are not inclined to further refine a rule that this Court adopted in 1935, unless it can be said that the shift of emphasis, from picketing the employer to picketing the employees, makes this refinement necessary. However, under the facts of this case, it does not compel a modification of the rule; such a shift of emphasis is but a play on words. To hold otherwise would be to close our eyes to reality.

It is plaintiff's *premises* which are picketed. The picket line stops the delivery of material to the premises; it does not affect the non-union employees, except that plaintiff might eventually be forced to stop construction; thus, plaintiff would have no further employment for them.

"Picketing for organizational purposes is only fictionally different from picketing for immediate recognition. The same kind of pressure on both employer and employees exists in either case; furthermore, the union is trying to force the employer to coerce his employees in either case; and finally, the union's basic desire—the desire for exclusive bargaining status—is the same in either case. *The only difference relates not to the conduct of the union, or its effects, but to the union's explanation of its conduct.* To make legal decisions vary on such a basis seems peculiar, if not unique." (Italics ours) 2 Labor Law Journal 803, 805 (November, 1951)

Hence, under these facts, the trial court erred when it concluded that a labor dispute existed under the statute.

It does not follow that an injunction will issue automatically, simply because there is no labor dispute. When no such dispute is found to exist, we give para-

mount consideration to the anticoercion declarations of RCW 49.32.020.

When there is no labor dispute and the picketing is coercive rather than persuasive, such picketing violates the declared public policy of the state (RCW 49.32.020), and an injunction will issue. *Union Electric & Plumbing Supply, Inc., v. United Ass'n of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada, Local Union 32, supra,* and cases cited therein, are illustrative.

There being no labor dispute, is the picketing coercive in the instant case?

It is not clear, from the record, whether the ultimate purpose of the picketing was to coerce plaintiff into having its employees join a union, or, since defendants had not even approached plaintiff, to cut off plaintiff's building materials and thus force plaintiff's business to die on the vine. In either event, the picketing was coercive and unlawful. *Fornili v. Auto Mechanics' Union Local No. 297 of the International Ass'n of Machinists,* 200 Wash. 283, 93 P.(2d) 422 (1939). The message carried by the pickets could not possibly have been intended for the enlightenment of plaintiff's employees, who had been contacted by agents of the defendants for the purpose of inducing them to join one or more of defendants' labor organizations.

Finally, we are convinced that issuance of the injunction would not violate defendants' constitutional right of free speech. The rule announced in *Swenson v. Seattle Central Labor Council,* 27 Wn.(2d) 193, 206, 177 P.(2d) 873 (1947), is applicable:

"The United States supreme court has, by these cases, established this rule: Peaceful picketing is an exercise of the right of free speech. Organized labor has the right to communicate its views either by word of mouth or by the use of placards. This is nothing more

nor less than a method of persuasion. But when picketing ceases to be used for the purpose of persuasion—just the minute it steps over the line from persuasion to coercion—it loses the protection of the constitutional guaranty of free speech, and a person or persons injured by its acts may apply to a court of equity for relief."

Although peaceful picketing is recognized as an exercise of the right of free speech and therefore lawful, it cannot be made the cover for concerted action against an employer in order to achieve an unlawful or prohibited objective, or an objective which is contrary to the declared public policy of the state. *Vogt, Inc., v. International Brotherhood of Teamsters, Local 695, A.F.L.*, ... Wisc. ....., 74 N.W.(2d) 749 (1956).

The judgment of dismissal is reversed, with instructions to issue the injunction in accordance with the prayer of plaintiff's complaint.

WEAVER, J.

We concur:

HAMLEY, C. J.
MALLERY, J.
SCHWELLENBACH, J.
HILL, J.
DONWORTH, J.
OTT, J.

Concurring Opinion

FINLEY, J. (concurring in the result)—For the reasons stating in my concurring opinion in *Union, etc., v. United Ass'n, etc.*, 45 Wn.(2d) 17, 272 P.(2d) 144, I concur in the result reached by the majority in the instant case.

Dissenting Opinion

ROSELLINI, J. (dissenting)—There is nothing in the statute, RCW 49.32.020, governing injunctions in labor

disputes that prohibits organizational picketing. Efforts to induce employees to affiliate with a union, through peaceful organizational picketing, are recognized as legitimate union activities in RCW 49.32.010, which provides in part:

"A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade or occupation; or have direct or indirect interests therein; . . . whether such dispute is:

"Between one or more employees or associations of employees and one or more employees or associations of employees."

It seems clear that the members of the picketing unions in the instant case "are engaged in the same trade or occupation" as the non-union employees whom respondents seek to induce to affiliate with their union.

In the Washington cases cited by the majority to sustain its view, this court recognized that where there is a labor dispute and the picketing is peaceful and noncoercive, the statute forbids the issuing of an injunction.

In *Building Service Employees International Union v. Gazzam*, 339 U.S. 532, 94 L.Ed. 1045, 70 S.Ct. 784 (reviewing *Gazzam v. Building Service Employees International Union*, 29 Wn.(2d) 488, 188 P.(2d) 97), the United States supreme court stated:

"The Washington statute has not been construed by the Washington courts in this case to prohibit picketing of workers by other workers. The construction of the statute which we are reviewing only prohibits coercion of workers by employers. *We cannot agree with petitioners' reading of this injunction that 'whatever types of picketing were to be carried out by the union would be in violation of the decree.' Respondent does not contend that picketing per se has been enjoined but only that picketing which has as its purpose violation of the policy of the state. There is no contention that pick-*

eting directed at employees for organization purposes would be violative of that policy. The decree does not have that effect." (Italics mine)

The trial court found that the picketing of the respondents was not maintained nor directed against the appellant but was maintained and directed against the employees of the said appellant, and I have found no legislative declaration of public policy against such picketing. It further found that the picketing was not coercive and that it was in fact peaceful. The facts as found by the trial court establish peaceful picketing for organizational purposes, which is not in violation of the law; therefore, I would affirm the judgment.

2. ORDER OF THE WASHINGTON SUPREME COURT DENYING THE PETITION FOR REHEARING

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

AUDUBON HOMES, INC., a Corporation, *Appellant*, vs. SPOKANE BUILDING AND CONSTRUCTION TRADES COUNCIL; LOCAL UNION 98 OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; T. J. RICHARDSON and C. E. FARRINGTON, *Respondents.*	No. 33480 Department .....

Filed in Clerk's Office, Supreme Court State of Washington Sep. 12, 1956.

BENJ. T. HART, Clerk
By ARCHIE B. STEWART, Deputy

ORDER DENYING PETITION FOR REHEARING

The court having considered the respondents' petition for a rehearing herein,

IT IS ORDERED that the petition be and it is hereby denied.

Dated this 12th day of September, 1956.

By the Court:

CHARLES T. DONWORTH
Chief Justice

3. JUDGMENT OF THE WASHINGTON SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Wednesday, September 12, 1956

AUDUBON HOMES, INC., a corporation,
Appellant,

vs.

SPOKANE BUILDING AND CONSTRUCTION TRADES COUNCIL; LOCAL UNION 98 OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; T. J. RICHARDSON and C. E. FARRINGTON,
Respondents.

No. 33480
Spokane County
No. 142133

JUDGMENT

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of Spokane County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 12th day of September, A.D. 1956, on motion of Hamblen, Gilbert and Brooke, of counsel for appellant, considered, adjudged and decreed, that the judgment of the Superior Court be, and the same is hereby reversed, with instructions to issue the injunction in accordance with the prayer of plaintiff's complaint; and that the said Audubon Homes, Inc., a corporation, have and recover of and from the said Spokane Building and Construction Trades Council; Local Union 98 of United Brotherhood of Carpenters and Joiners of America; T. J. Richardson and C. E. Farrington the costs of this action taxed and allowed at Three hundred eighteen and 25/100 ($318.25) Dollars, and that execution issue therefor. And it is further ordered, that this cause be

remitted to the said Superior Court for further proceedings, in accordance herewith.

Recorded Journal 41 at page 509
In the Office of the Clerk of
the Supreme Court of the State
of Washington